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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

September 11, 2007

Mr. Fred Fielding  
Counsel to the President  
Office of Counsel to the President  
The White House  
1600 Pennsylvania Ave., NW  
Washington, DC 20530

Dear Mr. Fielding:

We are writing to follow up on the August 16, 2007 letter from the Speaker of the House and the Senate Majority Leader emphasizing the need for a prompt response to information requests by our Committee and other relevant House and Senate committees concerning Administration foreign intelligence surveillance programs, as Congress considers possible revisions to the Foreign Intelligence Surveillance Act (FISA). In particular, the Committee requests expeditious production of the documents and information on the enclosed list, which encompasses requests made to the Justice Department on January 19, February 1, May 17, and July 30, which have not produced the requested information.

To this end, we are enclosing a list of requested documents and questions. We are simultaneously submitting several additional questions to DNI Director McConnell, which relate directly to recent statements he made publicly regarding warrantless surveillance. Since the Judiciary Committee has scheduled a hearing on this issue for September 18, I would ask that you transmit as much of the information as is possible before that day. Given that many of our requests have been under review by the Administration for many months, and we were given assurances during discussion of the most recent FISA amendments that additional documentation would be forthcoming to us, this should not be burdensome or unexpected. In any event, we would ask that you set up a meeting with Judiciary Committee staff to discuss the status of any unfilled requests by no later than Thursday, September 20. This is essential given that the staff has reached out to the DNI's office, the Justice Department and to the White House over the last month to review these requests, and in each case, there has been no compliance.

We write directly to you for two reasons. First, from previous discussions with the Justice Department about our specific past requests, it is clear that it is the White House, and not the Department, that will make decisions concerning the information to be shared with Congress on this subject. Information pertinent to this request is likely to be found not just at the Justice Department, moreover, but also in offices including but not limited to the White House, Office of the Vice President, the National Security Agency, Office of the Director of National Intelligence, and the Federal Bureau of Investigation. Accordingly, we are asking the White House to facilitate responding to this document and information request across all relevant agencies.

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In addition, as indicated in the August 16 letter to the President, this and similar requests from other Committees must receive the highest priority. At the Administration's urging, Congress recently enacted controversial changes to FISA in the Protect America Act of 2007, P.L. 110-55. This law, however, expires in less than six months. Our Committee has primary jurisdiction over FISA and has already begun the process of considering this issue. In the bipartisan spirit that helped produce the enactment of FISA in 1978, it is crucial that Congress and the Executive Branch cooperate and share critical information in this area if we are to produce a law that will truly protect America's security interests while safeguarding our constitutional rights.

Indeed, throughout the process of considering this issue, we have been clear about the need for all Members of the Judiciary Committee and a sufficient number of staff to have access to information concerning the surveillance programs, including orders of the FISA court. In July, Director of National Intelligence Mike McConnell directly assured Chairman Conyers that our Members would be given access to these materials. We specifically ask that you, Director McConnell, and other key Administration officials work with us expeditiously to fulfill this pledge and to answer our requests. Moreover, as it will likely be necessary to pursue closed hearings with current or former staff from the Department of Justice, such as Jack Goldsmith or Patrick Philbin, we look forward to your cooperation on classification issues that may arise.

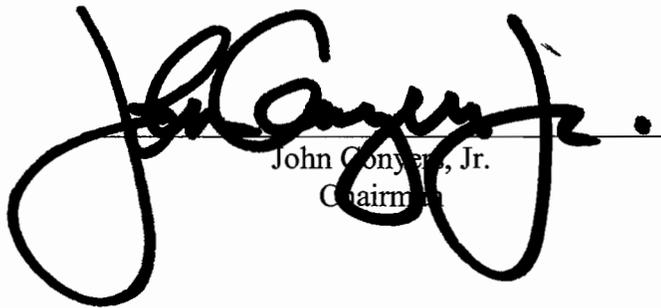
We appreciate that a number of our requests overlap with requests by or information already provided to other Committees, including subpoenas by the Senate Judiciary Committee. As the Speaker and Majority Leader noted, we assume there will be reciprocal disclosure of any materials that the Administration provides to the Senate Judiciary Committee. By the same token, to the extent that any of the information we request has already been provided to other Committees on a confidential basis, we would be pleased to expedite matters by obtaining access to the materials from them on a similar basis. We would similarly be pleased to work with you on other appropriate arrangements to obtain access to these materials. For example, to the extent that our requests include classified national security information, the House Permanent Select Committee on Intelligence has agreed to act as custodian for additional information provided.

We must emphasize, however, that important questions about FISA and the Administration's foreign intelligence surveillance programs remain unanswered, and we cannot fulfill our legislative and oversight functions without this critical information. We appreciate your personal attention to ensure a complete and expeditious response to each of our requests.

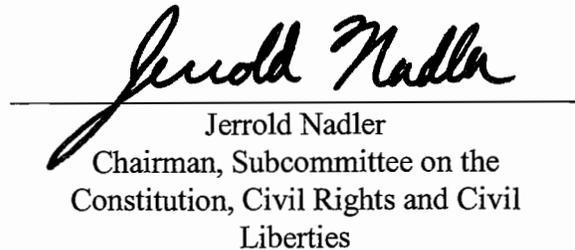
Responses and questions should be directed to the Judiciary Committee Office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). Thank you for your cooperation in this matter.

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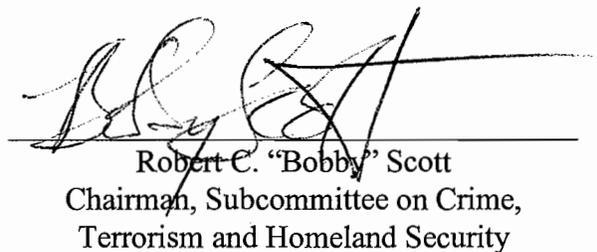
Sincerely,



John Conyers, Jr.  
Chairman



Jerrold Nadler  
Chairman, Subcommittee on the  
Constitution, Civil Rights and Civil  
Liberties



Robert C. "Bobby" Scott  
Chairman, Subcommittee on Crime,  
Terrorism and Homeland Security

Enclosure

cc: Hon. Mike McConnell  
Hon. Paul Clement  
Hon. Lamar S. Smith  
Hon. Trent Franks  
Hon. J. Randy Forbes

## Document and Information Request

### **A. Documents Requested**

The Committee asks for complete and unredacted versions of the following:

1. All documents<sup>1</sup> from September 11, 2001 to the present constituting the President's authorization or reauthorization of any warrantless electronic surveillance<sup>2</sup> programs.

This request includes, but is not limited to, the Presidential Memoranda of March 19 and April 2, 2004, and the Presidential Authorizations dated October 4, November 2, and November 30, 2001; January 9, March 14, April 18, May 21, June 24, July 30, September 10, October 15, and November 18, 2002; January 8, February 7, March 17, April 22, June 11, July 14, September 10, October 15, and

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<sup>1</sup>For the purposes of this document and information request, the term "document" means any written, recorded or graphic matter of any nature whatsoever, regardless of how recorded, whether physical or electronic, whether or not maintained on any digital repository or electronic media, and whether original or copy, including, but not limited to, the following: memoranda, reports, manuals, instructions, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazine or newspaper articles, interoffice and intra-office communications, electronic mail (e-mail), any internet-enabled communication, contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, transcripts, diaries, analyses, summaries, minutes, comparisons, messages, correspondence, press releases, circulars, reviews, opinions, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of any kind (including without limitation, tapes, cassettes, disks, computer files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed or other graphic or recorded matter of any kind of nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

<sup>2</sup>For the purposes of this document and information request, the term "electronic surveillance program" means any classified intelligence program or programs, that include electronic surveillance involving the interception of communications in the United States or when at least one party is in the United States. This includes, but is not limited to, a program that has been termed the "Terrorist Surveillance Program" (at least some portion of which the President confirmed publicly in December 2005), programs of surveillance brought under the Foreign Intelligence Surveillance Court in January 2007, the program of surveillance under the Protect America Act of 2007, P.L. 110-55, and all related, predecessor, or subsequent versions of these programs, regardless of how titled. Except as otherwise noted, "electronic surveillance" means that term prior to the definitions in the Protect America Act. For the purposes of this document and information request, the term "warrantless" electronic surveillance programs refer to such programs and activities undertaken without a warrant or order from a court.

December 9, 2003; January 14, March 11, May 5, June 23, August 9, September 14, and November 17, 2004; January 11, March 1, April 19, June 14, July 26, September 10, October 26, and December 13, 2005; and January 27, March 21, May 16, July 6, September 6, October 24, and December 8, 2006.

2. All documents from September 11, 2001 to the present, including but not limited to any legal opinions, memoranda, audits, or evaluations, concerning any programs in which, for foreign intelligence purposes, the government obtains or obtained call or e-mail record information or other external data on phone calls or e-mails made in the United States, through the gathering of “metadata” or otherwise, regardless of how the program was titled or which agencies conducted the program, including but not limited to stored communication and including but not limited to the programs referred to in the following articles: Leslie Cauley, *NSA Has Massive Database of Americans' Phone Calls*, USA TODAY, May 11, 2006; Eric Lichtblau, *F.B.I. Data Mining Reached Beyond Initial Targets*, N.Y. TIMES, September 9, 2007; and Scott Shane and David Johnston, *Mining of Data Prompted Fight Over U.S. Spying*, N.Y. TIMES, July 29, 2007.
3. All documents from September 11, 2001 to the present containing analysis or opinions from the Department of Justice, the National Security Agency, the Department of Defense, the White House, or any other entity within the Executive Branch on the legality of, or legal basis for, any warrantless electronic surveillance program, including but not limited to documents that describe why the surveillance at issue should not or could not take place consistent with the requirements and procedures of the Foreign Intelligence Surveillance Act (FISA) as they existed at the time of the document.

This request includes, but is not limited to, any memoranda or legal opinions from the Department of Justice Office of Legal Counsel or Office of Intelligence Policy and Review, including any memoranda or opinions authored or co-authored by former Department of Justice officials Jack Goldsmith, Patrick Philbin, or John Yoo concerning legal issues related to any warrantless electronic surveillance program, and memoranda issued by the Department of Justice dated October 4 and November 2, 2001; January 9, May 17, and October 11, 2002; February 25, 2003; March 15, May 6, and July 16, 2004; and February 4, 2005.

4. All documents from September 11, 2001 to the present, including orders, memoranda decisions, or opinions of the Foreign Intelligence Surveillance Court (FISC) and Foreign Intelligence Court of Review (FISR), and pleadings submitted to the FISC and FISR, that reflect communications with the FISC or FISR or any FISC or FISR judges about warrantless or other electronic surveillance program(s), containing legal analysis, arguments, or decisions concerning the interpretation of FISA, the Fourth Amendment to the Constitution, the Authorization for the Use of Military Force enacted on September 18, 2001, or the President's authority under Article II of the Constitution.

This request includes, but is not limited to: the January 10, 2007 Orders of the FISC referenced in the January 17, 2007 letter from Attorney General Gonzales to Senator Patrick Leahy and others, bringing the warrantless electronic surveillance program “into” FISA; any Orders of the FISC that require foreign-to-foreign communications to be subject to a warrant; and any Orders of the FISC narrowing or expanding the government's ability to intercept foreign communications that may pass through equipment in the United States.

5. All documents from September 11, 2001 to the present that reflect, discuss, or describe agreements or understandings between the White House, the Department of Justice, the National Security Agency, or any other entity of the Executive Branch and

telecommunications companies, internet service providers, equipment manufacturers, or data processors regarding criminal or civil liability for assisting with or participating in warrantless electronic surveillance program(s).

This request includes, but is not limited to, any certifications by the Attorney General or other Executive Branch official pursuant to 18 U.S.C. 2511(2)(a)(ii) provided to any telecommunications company, internet service provider, equipment manufacturer, or data processor in connection with requests for assistance with warrantless electronic surveillance program(s).

6. All documents from September 11, 2001 to the present related to the classified intelligence program that was the subject of discussion during the March 2004 hospital visit to former Attorney General John Ashcroft and other events that former Deputy Attorney General James Comey described in his May 15, 2007 testimony before the Senate Judiciary Committee

This request includes, but is not limited to:

- a) all documents from January 1, 2004 to the present related to the transfer of the powers of the Attorney General from then-Attorney General John Ashcroft to then-Deputy Attorney General James Comey in or around March, 2004 that reflect, discuss, or describe a) the date, time, or manner of that transfer of power; b) communication with or notice to White House personnel, including the President or the Vice President, about that transfer of power; c) knowledge of White House personnel about that transfer of power;
  - b) any memoranda authored or co-authored by former Deputy Attorney General James Comey or any other DOJ official on or around March 10, 2004 concerning legal issues related to any warrantless electronic surveillance program;
  - c) any memoranda or other documents from then-Counsel to the President Alberto Gonzales or any other White House official provided to Former Deputy Attorney General James Comey or any other DOJ official in March, 2004, concerning legal issues related to any warrantless electronic surveillance program or any proposed or actual revisions thereto; and
  - d) an unredacted copy of the notes or program log of FBI Director Mueller provided to the House Judiciary Committee on August 14, 2007.
7. All documents from December 1, 2005 to the present related to the investigation by the Department of Justice's Office of Professional Responsibility (OPR) into the role of Department of Justice attorneys in the authorization and oversight of the warrantless electronic surveillance program, which was opened on January 11, 2006 and closed approximately three months later after OPR investigators were denied the necessary security clearances ("OPR Investigation") that reflect, discuss, or describe the following:
    - a) consideration of the request for security clearances;
    - b) communications between White House personnel, including the President or the Vice President, and Department of Justice personnel about the OPR investigation or consideration of the request for security clearances; and
    - c) the reasons for ending that investigation.

8. Since September 11, 2001, all audits, reports, or evaluations of or concerning any warrantless surveillance program(s), whether conducted by government employees or private companies, including any reports as to the effectiveness of minimization standards or procedures to protect U.S. persons' communications.

## **B. Questions**

1. Since September 11, 2001, has the Administration conducted any warrantless surveillance in the United States, other than through the warrantless electronic surveillance program the President acknowledged in late 2005 (known now as the Terrorist Surveillance Program), or as explicitly authorized by FISA at the time, or any other warrantless surveillance techniques such as physical searches of home or offices or opening of mail? Are such activities continuing? Is the Administration currently conducting any foreign intelligence surveillance in the United States, other than that explicitly authorized by the Foreign Intelligence Surveillance Act (FISA)?
2. How many actionable leads have been referred to operational entities as a result of acquisitions of US persons' conversations or communications?
  - a) Please break down the response as follows: 1) between September 11, 2001 and October 25, 2001; 2) between October 25, 2001 and January 10, 2007; 3) between January 10, 2007 and August 5, 2007; and 4) since August 5, 2007.
  - b) Of the actionable leads referred to operational entities, what have been the results? Please differentiate between counter-terrorism, criminal investigations and prosecutions, counter-espionage, and in-theater combat operations. Please indicate with specificity whether any attacks have been averted.
3. How many conversations or communications (both incoming or outgoing) monitored under the programs have revealed a contact between a US person and someone for whom there was probable cause to believe they were in or supporting al Qaeda? How many people in the US have had email communications with someone considered to be in al Qaeda? How many of these conversations or communications have actually involved terrorist activity, as opposed to other topics of conversation? How many people have been charged with any wrongdoing as a result of such interceptions? How many terrorist activities have been disrupted as a result of such interceptions? How many people have been subjected to surveillance but not charged with any crime or otherwise detained?
4. How many persons whose conversations or communications were monitored under the programs have been subjected to any other surveillance techniques or searches, such as physical searches of home or offices, opening of mail, etc, whether subject to a warrant or not?
5. Have any US persons whose conversations or communications were monitored under the programs been detained within the United States? Have any US or foreign persons been interrogated or detained outside of the United States, whether by the United States or any other government, in significant part as a result of such monitoring?
6. Have journalists, lawyers, lawmakers (whether federal, state, or local), or aides had their conversations or communications monitored under the programs? If so, how many?

7. How many persons in the US had conversations (voice or email content) or communications (call or email data) acquired through electronic surveillance programs? In how many of these acquisitions was the person in the US the target of the acquisition? In how many of these acquisitions was the acquisition incidental, and in how many of those incidental acquisitions did the individuals subsequently become the target of acquisitions? How many warrants for continued surveillance were sought after identification of someone as a person in the US? How many such applications were denied? Please break down the response between warrantless and other electronic surveillance programs as to the following periods: a) between September 11, 2001 and October 25, 2001; b) between October 25, 2001 and January 10, 2007; c) between January 10, 2007 and August 5, 2007; and d) since August 5, 2007.
8. How many individuals have been targeted for surveillance under the Protect America Act that has involved foreign intelligence generally, as opposed to terrorism or nuclear proliferation?
9. Please identify all telecommunications companies or internet service providers that allowed the government to access communication streams in the US without warrants between September 2001 and January 10, 2007. Please identify all telecommunications companies or ISPs that have allowed access since January 10, 2007. Please break down by programs that obtained external and internal data.
10. During the time period in March 2004 in which the warrantless surveillance program did not have Attorney General certification, please identify all telecommunications companies that continued to allow surveillance without such certification. Please break down by programs that obtained external and internal data.
11. Please identify any telecommunication companies or internet service providers that refused to allow access to communication streams without court order or warrant. Please provide all letters or communications from telecommunications companies or internet service providers in which they refused to allow access to communications streams without court order or warrant. Please break down by programs that obtained external and internal data.
12. Please identify the precise legal authority that was asserted in any and all documents provided to telephone or internet service providers to obtain their cooperation between September 2001 and January 2007. Please break down by programs that obtained external and internal data. Please provide any certifications, letters, and any legal memoranda or opinions setting forth such authority.